

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN A. HIRSCH AND RONALD W. ZOLLA,)
Individually and as officers, directors, and)
shareholders of ZHL, Inc. and ZHL, Inc.)
Plaintiffs,)
v.) Civil Action
MICHAEL LAMENSDORF and) No. 05-10902-DPW
KATHY LAMENSDORF, Individually and)
as shareholders of ZHL, INC.,)
Defendants.)

PLAINTIFFS' MOTION TO REMAND

The plaintiffs in this matter herewith move pursuant to 28 U.S.C. § 1446 to remand this case to the Massachusetts Superior Court. In support of their motion, the plaintiffs state:

1. The asserted basis for removal is complete diversity between the parties. Under 28 U.S.C. § 1332(c)(1), however, corporations are resident both in the state where they are incorporated and the state in which they maintain their principal place of business. Whether complete diversity exists is measured at the time the removal petition is filed.

2. As detailed in the Affidavit of John A. Hirsch, submitted concurrently herewith, the plaintiff ZHL is a Massachusetts corporation with a principal place of business in Florida. It is therefore non-diverse as to the Lamensdorfs, who are Florida residents.

3. In addition to Mr. Hirsch's Affidavit, the plaintiffs rely upon their "Consolidated Memorandum in Support of (i) Motion to Remand and (ii) Motion for Attorneys' Fees Pursuant to 28 U.S.C. § 1446," submitted concurrently herewith.

WHEREFORE, the plaintiffs herewith move that this Honorable Court:

- A. Remand this case back to the Massachusetts Superior Court; and
- B. Grant whatever other or additional relief this Honorable Court deems just under the circumstances.

Respectfully submitted,

JOHN A. HIRSCH, RONALD W. ZOLLA,
and ZHL, INC.

By their Attorneys,

/s/ Edward Foye
J. Owen Todd (BBO # 499480)
Edward Foye (BBO #562375)
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Dated: May 23, 2005

Certificate of Compliance with L.R. 7.1

I, Edward Foye, state that I spoke with Matthew Miller, attorney for the defendants, about the matter raised in the foregoing on May 13, 2005.

/s/ Edward Foye
Edward Foye